

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1051 OF 2022

SHANTANU
SHANKARSA
DHUDUM

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SHANKARSA DHUDUM
Date: 2023.04.21
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Reliance General Insurance Co. Ltd.	)	
4 th Floor Chintamani Avenue	)	
Off Western Express Highway, Next	)	
To Virwani Industrial Estate	)	
Goregaon (E), Mumbai-400063	)	
Policy No. 1111732343000139	)	
Valid From: 10.02.2014 to 09.02.2015	)	Appellant

Versus

1. Mr. Aman Sanjay Tak	)	
Aged about 19 years	)	
R/at-C-/503-504, Clifton Apartment	)	
in front of Sundarban, Laxmi	)	
Industrial Estate, Andheri(W), Mumbai	)	...Original Applicant
2. M/s M. K. Enterprises	)	
R/at- Room No. 102, 1 st Floor	)	
Salman Apartment, Hira Bhai Compound	)	
Plot No.3, Ghodapdeo Cross Road No.1	)	
Mazgaon, Mumbai - 400010	)	
Motor Dumper No. MH-01-AP-1703	)	Respondents

Ms. Shalini Shankar for the Appellant.
 Mr. Jitendra P. Gor for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th APRIL 2023.

JUDGMENT. :

1. The issue involved in this appeal is, the amount received under medical reimbursement by the claimants be reduced from compensation amount.

2. It is contention of learned counsel for appellant that, the claimant has sustained the injuries in the accident and he has received the medical reimbursement amount by the other Insurance Company under the Mediclaim Policy. If claimant has already received amount under the Mediclaim Policy, he is not entitled to get this amount of Rs.12,17,592/- of medical reimbursement from Appellant/Insurance Company, but this fact is not considered by the Tribunal and awarded the compensation of Rs.14,44,314/-. The amount received by the claimant needs to be deducted from the awarded amount of compensation, hence requested to allow the appeal.

3. It is contention of learned counsel for the Respondent/Claimant that, the said policy was taken by his father for whole family. It was contractual liability between father of claimant

and that Insurance Company, a premium was paid by the father of claimant to said Insurance Company for reimbursement of medical expenses. Accordingly, the medical expenses were reimbursed by the said Insurance Company. In the present case, the appellant is the insurer of offending vehicle, who dashed the claimant's motorcycle from backside. The accident occurred due to sole negligence of the driver of offending vehicle. They are liable to pay the compensation.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal').

5. It is claimant's case that, on 17th March, 2014 at about 13:00 hrs the claimant along with his friend Trisha Jain was proceeding on motorcycle towards their house. When, the said motorcycle reached on Balasaheb Devras Mart, in front of Mahesh Mohands Jewelry, Lokhandwala Circle, Andheri (W), Mumbai at relevant time, one motor dumper bearing No. MH-01-AP-7130 came in fast speed as well as in rash and negligent manner and dashed the motorcycle of the claimant from backside. As a result, the claimant fell down and suffered injuries. To prove disability, the claimant has examined PW-3 Dr. Vinayak Dattaray Joshi at Exhibit-'43'. He has

stated, he had examined the claimant. The claimant has suffered 43.75% partial permanent disability of neurological nature, disability certificate is at Exhibit-'44'. He has stated that because of the said disability, the claimant is having difficulty in walking, memory loss and difficulty in maintaining balance. Considering the evidence of this witness and documentary evidence on record, the tribunal has awarded compensation including medical expenses of Rs.14,44,314/-.

6. It is contention of learned counsel for the appellant that, as claimant has received amount of Rs.12,17,592/- under medical reimbursement from other Insurance Company, the tribunal should have deducted this amount from awarded compensation amount.

7. It is contention of learned counsel for the claimant that his father had taken Health Insurance Policy from another Insurance Company and had paid premium, on that basis, the said amount was given to the claimants' father.

8. In my view, The father of claimant had taken insurance policy by paying separate premium for whole family. The contractual liability between father and other Insurance Company is different, than the contractual liability between driver and owner of offending vehicle and Appellant/Insurance Company. The owner of offending

vehicle had paid premium of Insurance Policy. Both contractual liability cannot be put on equal footing. The Appellant/Insurance Company cannot claim deduction of the amount for which separate premium was paid by different person under different contractual liability. The Appellant/Insurance Company is liable to indemnify the contractual liability between them and owner of offending vehicle. So, the amount received under contractual liability is different amount of medical reimbursement, it cannot be deducted from the amount which the appellants are liable to pay as compensation.

9. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
 - ii. The claimant is permitted to withdraw deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the tribunal.
- The parties are at liberty to withdraw it, as per Rule.

10. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)